SEP 20 1951

IN THE

Supreme Court of the United States

October Term, 1951.

No. 341

STATE OF CALIFORNIA and HARRY THEODORE PETERSEN, IDA PETERSEN, CLAYTON LEON DAIGLE and AZILE CAROL DAIGLE, Individually and as a co-partnership doing business as "The Lodge,"

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

EDMUND G. BROWN,
Attorney General of the State of California,
WALTER L. BOWERS,
Assistant Attorney General,
[illegible]
Attorneys for Petitioners, State of California.

RAYARD BROWN,
Deputy Attorney General,
[illegible]
Of Counsel.

SUBJECT INDEX

	PAGE
Opinions below	2
Jurisdiction	2
Questions presented	2
Statutes involved	3
Statement	4
Specification of errors to be urged	9
Reasons for granting the writ	10
Conclusion	19
Appendix. Pertinent statutory provisions	App. p. 1

TABLE OF AUTHORITIES CITED

CASES

Adams v. United States, 319 U. S. 312, 63 S. Ct. 1122, 87 L. Ed. 1221 13

Arlington Hotel Co. v. Fant, 278 U. S. 439, 49 S. Ct. 227, 73 L. Ed. 447 15

Atkinson v. State Tax Comm., 156 Ore. 461, 67 P. 2d 161 16

Brooke v. State, 155 Ala. 78, 46 So. 491 16

Collins v. Yosemite Park and Curry Company, 304 U. S. 518, 58 S. Ct. 1009, 82 L. Ed. 1502 ..... 16, 18

Fort Leavenworth Railroad v. Lowe, 114 U. S. 525, 5 S. Ct. 995, 29 L. Ed. 264 15

James v. Dravo Contracting Company, 302 U. S. 134, 58 S. Ct. 208, 82 L. Ed. 155 14

Johnson v. Morrill, 20 Cal. 2d 446, 126 P. 2d 873 16

LaDuke v. Melin, 45 N. D. 349, 177 N. W. 673 16

Mayor and City Council of Baltimore v. Linthicum, 183 Atl. 531 16

Palmer v. Barrett, 162 U. S. 399, 16 S. Ct. 837, 40 L. Ed. 1015 15

Silas Mason Company, Inc. v. State Tax Comm. of the State of Washington, 302 U. S. 186, 58 S. Ct. 233, 82 L. Ed. 187 15

United States v. Tully, 140 Fed. 899 16

Valley County v. Thomas, 109 Mont. 345, 97 P. 2d 345 16

STATUTES

Act of October 1, 1890 (26 Stats. 651) 4

Act of October 9, 1940, Sec. 1 (54 Stats. 1083) 5

Act of October 9, 1940, Sec. 2 (54 Stats. 1083) 5

United States Code, Title 16, Sec. 47e 17

United States Code, Title 16, Sec. 45a 17

United States Code, Title 16, Sec. 51 17

United States Code, Title 16, Sec. 78 4

PAGE

United States Code, Title 16, Sec. 80.....5, 11
United States Code, Title 16, Sec. 80a.....5, 11
United States Code, Title 16, Sec. 161e 17
United States Code, Title 16, Sec. 167a 17
United States Code, Title 16, Sec. 192b 17
United States Code, Title 16, Sec. 243 17
United States Code, Title 16, Sec. 251a 17
United States Code, Title 16, Sec. 261 17
United States Code, Title 16, Sec. 343b 17
United States Code, Title 16, Sec. 403h-11 17
United States Code, Title 16, Sec. 404c-11..... 17
United States Code, Title 16, Sec. 424b 17
United States Code, Title 16, Sec. 471d..... 4
United States Code, Title 18, Sec. 7, Subd. 3.....3, 10, 12, 16
United States Code, Title 28, Sec. 1254(1)..... 2
United States Code, Title 40, Sec. 255.....3, 9, 13, 16, 17

IN THE

Supreme Court of the United States

October Term, 1951.

No. .....

STATE OF CALIFORNIA and HARRY THEODORE PETERSEN, IDA PETERSEN, CLAYTON LEON DAIGLE and AZILE CAROL DAIGLE, Individually and as a co-partnership doing business as "The Lodge,"

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

The State of California, and Harry Theodore Petersen, Ida Petersen, Clayton Leon Daigle and Azile Carol Daigle, individually and as a co-partnership doing business as "The Lodge," pray that a Writ of Certiorari issue to review the Judgment entered in this case on August 2, 1951, by the United States Court of Appeals for the Ninth Circuit affirming a judgment of the District Court holding that the United States has exclusive jurisdiction of a village on private property within the confines of a national park.

Opinions Below.

The opinion of the District Court is reported in 91 Fed. Supp. 209. The opinion of the Court of Appeals [R. 90-96] has not yet been reported.

Jurisdiction.

The Judgment of the Court of Appeals was entered August 2, 1951. [R. 97.] The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

Questions Presented.

1. When California ceded to the United States exclusive jurisdiction for the establishment of General Grant National Park and later for Kings Canyon National Park, and the acts of cession provided among other things that "exclusive jurisdiction shall be and the same is hereby ceded to the United States over and within all of the territory which is now or may hereafter be included in those several tracts of land in the State of California set aside and dedicated for park purposes by the United States" did such acts of cession affect only lands "set aside and dedicated for park purposes by the United States"?

2. Did such acts of cession also affect all property within the exterior boundary line, even though such property had never been dedicated for park purposes, was not owned or controlled by the United States, was pri-

vately owned, and where the state had been exercising exclusive jurisdiction until this controversy arose?

3. Whether the United States District Court has jurisdiction under 18 U. S. C. Section 7, subdivision 3, over an alleged offense of selling alcoholic beverages without a license from the Department of Interior where the sale is not on "land reserved or acquired for the use of the United States."

4. Whether the legal philosophy of the relationship between the various states and the United States has been and is that the United States does not acquire exclusive territorial jurisdiction over any parcel of land (other than District of Columbia) unless the United States is the owner of the land in question.

5. Whether the United States may take jurisdiction from a state under 40 U. S. C., Section 255, if the United States is not the owner of the land in question as provided by said Section 255.

Statutes Involved.

The pertinent statutory provisions will be found in the appendix.

Statement.

By an Act approved October 1, 1890, Congress reserved and withdrew "from settlement, occupancy and sale" and set apart as reserved forest land four sections of land which, until 1940, comprised General Grant National Park. This Act did not affect any bona fide entry of land made before the effective date of the Act. [R. 71, 26 Stats. 651, 16 U. S. C., §471d.] This Act did not establish General Grant National Park, but apparently the park was established in the following decade. (16 U. S. C., §78.) In 1891 the Legislature of California passed a statute which gave the United States exclusive jurisdiction over all land ceded or conveyed to the United States during the time the United States shall be or remain the owner thereof. (App. p. 1.) In 1919 the Legislature of California passed an act ceding exclusive jurisdiction to the United States "over and within all of the territory which is now or may hereafter be included in those several tracts of land in the State of California set aside and dedicated for park purposes by the United States" for various national parks, including General Grant National Park. [R. 57.] In 1920 Congress adopted an act providing that full and exclusive jurisdiction was assumed by the United States over the territory embraced and included within General Grant National Park, Yosemite National Park and Sequoia National Park. [R. 58.] In 1940 Congress established Kings Canyon National Park and at the same time abolished General Grant National Park, but made it a part of Kings Canyon National Park and provided that in the future it would be known as the General Grant grove section of said park. [R. 59.] In 1943, the Legislature

of California ceded to the United States exclusive jurisdiction "over and within all of the territory which is now or may hereafter be included in those several tracts of land in the State of California set aside and dedicated for park purposes by the United States as 'Kings Canyon National Park.'" [R. 59-60.]

The area involved in this proceeding is in an unincorporated village which is located in Section 5, Township 14, Range 28 east, Mount Diablo base and meridian. Section 5 of Township 14 was one of the four original sections of General Grant National Park. When Kings Canyon National Park was established, land extending one-half mile east of Section 5 was added. The area therefore is within the exterior boundary lines of Kings Canyon National Park. [R. 55, 71.] The particular area has never been dedicated and set aside for park purposes by the United States. [R. 55-57.] The area in question was not described in Section 1 of the Act of Congress of 1940 establishing Kings Canyon National Park, wherein a vast tract of specifically described property was withdrawn "from settlement, occupancy and disposal," and was dedicated and set apart as a public park. (16 U. S. C., §80.) Section 2 of the Act added certain additional lands, and then provided that, "the lands formerly within the General Grant National Park, California, and particularly described as follows, to-wit: All of sections 31 and 32, township 13 south, range 28 east, and sections 5 and 6, township 14 south, range 28 east, of the same meridian, are, subject to valid existing rights, hereby added to and made a part of the Kings Canyon National Park and such lands shall be known as the General Grant grove section of the said park." (16 U. S. C., §80a.)

The Secretary of the Interior gave notice to the Governor of California on April 25, 1945, of the acceptance of jurisdiction by the United States as follows:

> "Notice is hereby given, in accordance with the provisions of the act of October 9, 1940 (54 Stat. 1083; 40 U. S. C., Sec. 255) that, effective as of the 1st day of June, 1945, at 12 m., Pacific War Time, the United States accepts exclusive jurisdiction over all lands now included in Kings Canyon National Park. These lands are particularly described in the act of March 4, 1940 (54 Stat. 41), establishing the park, and in proclamation No. 2411, issued by the President of the United States on June 21, 1940 (54 Stat. 2710; 3 C. F. R., Cum. Supp., 163), adding certain lands to the park under authority contained in section 2 of the said act." [R. 60-61.]

The petitioners, except the State of California, are a co-partnership which operates a restaurant and a tavern, known as "The Lodge," where alcoholic beverages are sold. [R. 55.] For simplicity in this petition, the group of petitioners except the State of California, will be referred to as "petitioners Petersen." "The Lodge" is located in Wilsonia Village, which is in section 5, township 14 south, range 28 east, Mount Diablo Meridian in the County of Tulare, State of California. [R. 55.] Wilsonia Village consists of approximately 120 acres which have been divided into approximately 500 parcels and contains about 243 homes. This is a part of a tract

of 160 acres which was originally patented on October 15, 1891, to one Daniel M. Perry. [R. 55-57.] Other than being entirely surrounded by a national park, Wilsonia Village is no different than any other unincorporated community in California. What governmental service is required is performed by the county and state. There is established, pursuant to the laws of the State of California, a County Fire District. The State Division of Forestry and the County Fire District maintains fire fighting equipment at Wilsonia Village. [R. 67.] Elementary schools have been established and maintained for residents of Wilsonia Village, one such school having been conducted on government land until a few years ago when the enrollment fell below the required minimum. [R. 68.]

On November 26, 1947, the petitioners Petersen applied to the Department of Interior for a permit to sell alcoholic beverages at "The Lodge." The application was denied on March 3, 1948. The petitioners Petersen did not and do not hold any permit from any federal agency for the sale of liquor. [R. 64.] On April 15, 1948, the petitioners Petersen applied to the State Board of Equalization of the State of California for a seasonal on-sale alcoholic beverage license, pursuant to the provisions of the Alcoholic Beverage Control Act of California. A protest was filed on behalf of the National Park Service on the ground that the United States claimed exclusive jurisdiction over private lands in Kings Canyon National Park. The matter came on for hearing before the Board

itself, pursuant to notice given to all parties. After consideration thereof, the Board of Equalization issued the seasonal license on July 22, 1948. The license has been in effect ever since on a seasonal basis. [R. 64-65.]

Five days later, the Regional Director of the National Park Service at San Francisco notified the petitioners Petersen by letter that the National Park Service did not recognize the jurisdiction of the State Board of Equalization either to grant or deny the liquor license, and that any sale of liquor at "The Lodge" without a permit from the Park Service would subject the petitioners Petersen to prosecution. [R. 66.] Over one year later this action was commenced in the United States District Court for an injunction to restrain the sale of liquor without a license. [R. 2-10.] The State of California, by stipulation, intervened as a defendant in the proceeding. [R. 15-16.] Sixty-three other residents, owners of summer homes in Wilsonia Village, also were permitted to intervene as defendants in the District Court. [R. 56, 68.] The District Court refused to issue the injunction on the ground that there was an adequate remedy at law, but determined that it was a matter where a declaratory judgment could be issued and did render a declaratory judgment in favor of the United States. [R. 74, 75-77.]

The petitioners Petersen and the State of California appealed to the Circuit Court which affirmed the Judgment of the District Court. [R. 77-78, 97.]

Specification of Errors to Be Urged.

The Court of Appeals erred:

1. In holding that the act of cession of the State of California in ceding exclusive jurisdiction to the United States was not limited by its very terms to property "set aside and dedicated for park purposes by the United States."

2. In holding that the Secretary of Interior, contrary to 54 Stat. 1083, 40 U. S. C., §255, had authority to and did accept, on behalf of the United States, exclusive jurisdiction over lands or interests therein which had not been acquired by the United States and which was not under his immediate jurisdiction, custody or control.

3. In holding that the State of California has ceded to the United States and that the United States has accepted from the State of California the exclusive jurisdiction over that area of privately owned property known as Wilsonia Village.

4. In holding in effect that the tract of privately owned land comprising Wilsonia Village "was dedicated and set apart for park purposes by the United States."

5. In holding that the United States courts have territorial jurisdiction of offenses committed within or on lands not reserved or acquired for the exclusive use of the United States.

6. In holding that a liquor license for premises on privately owned property in Wilsonia Village should be issued by the National Park Service under regulations of the Secretary of Interior and not by the State Board of Equalization of the State of California, pursuant to the laws of California.

Reasons for Granting the Writ.

The decisions of the courts below mark a definite reversal of the relationship between the States of the Union and the United States since the establishment of this government. Until this controversy arose and to the present time the State of California and the County of Tulare have exercised such governmental functions and powers as were necessary in Wilsonia Village. The decisions of the courts below strike down the propriety of the State of California exercising any governmental functions in Wilsonia Village. The petitioners believe that these decisions extend by implication the expressed words of the various acts of the Legislature of California in ceding jurisdiction to the United States; that the decisions purport to confer territorial jurisdiction upon the United States District Courts contrary to 18 U. S. C., § 7, subd. 3; and, that such decisions are contrary to the legal philosophy not only embodied in the decisions of this Court, but also in the Acts of Congress on the relationship between the national government and the various states, that is, that exclusive jurisdiction is not acquired by the United States unless the property in question is owned and controlled by the United States.

1. In 1919 the Legislature of California enacted a ceding statute providing that "exclusive jurisdiction shall be and the same is hereby ceded to the United States over and within all of the territory which is now or may hereafter be included in those several tracts of land in the State of California set aside and dedicated for park purposes by the United States. . . ." The courts below have determined that since Wilsonia Village is within the exterior boundaries of the park that therefore it is "included within those several tracts of land."

However, the language of the Act of Cession confines the cession to those several tracts of land set aside and dedicated for park purposes. Wilsonia Village and the particular property in question has never been dedicated and set aside for park purposes. Obviously the Legislature in ceding jurisdiction to the national government was attempting to conform its action to the action of the national government in setting aside and dedicating property for park purposes. Furthermore, the Legislature was not only looking to the action of the national government as it had existed, but also as it might occur in the future, for it provided that the territory which is now included and may hereafter be included in those several tracts set aside and dedicated for purposes. Both the present cession of jurisdiction and the future cession of jurisdiction was predicated upon the premise that the property would be dedicated for park purposes by the United States.

In 1940, when Congress established Kings Canyon National Park (16 U. S. C., §80), it described by metes and bounds a vast area of property, but not including this property, and provided that such property is reserved and withdrawn from "settlement, occupancy, or disposal" under the laws of the United States, and is "dedicated and set apart as a public park." The second section of the act (16 U. S. C., §80a) abolished General Grant National Park but provided that the lands formerly in such park would be known as the General Grant grove section of Kings Canyon National Park. This section of the act added certain adjoining lands on the east, extending the easterly boundary about one-half mile, and provided that certain lands (generally to the south) could be added by Presidential Proclamation. This act provided, among

other things, that "the lands formerly within the General Grant National Park, California, and particularly described as follows, to-wit: All of sections 31 and 32, township 13 south, range 28 east, and sections 5 and 6, township 14 south, range 28 east, of the same meridian are, subject to valid existing rights, hereby added to and made a part of the Kings Canyon National Park and such lands shall be known as the General Grant grove section of said park."

It is plain from the act establishing Kings Canyon National Park that Congress did not intend to include Wilsonia Village in such park. The act, in referring to sections 31 and 32 of township 13, says, "All of sections 31 and 32"; but no such language is found with reference to sections 5 and 6 of township 14. Furthermore, if it was the intention of Congress to include Wilsonia Village in Kings Canyon National Park, there would have been no occasion to use the words, "subject to valid existing rights" with reference to sections 5 and 6 of township 14. It is clear that the acts of Congress and the acts of the Legislature of California relate only to property dedicated and set aside for park purposes. This, of necessity limits the land to government owned land.

2. The courts below have held that the petitioners Petersen may be prosecuted criminally for conducting their business without a license issued by the Department of Interior. In so holding, the courts below have held contrary to the specific provisions of Title 18, U. S. Code, §7, subd. 3, relating to the criminal jurisdiction of the United

States courts. This section provides that the term "special maritime and territorial jurisdiction of the United States" as used in this title includes:

> "3. Any land reserved or acquired for the use of the United States and under the exclusive or concurrent jurisdiction thereof. . . ."

None of the property in Wilsonia Village is reserved or acquired for the use of the United States.

The decision in the instant case is directly contrary to the case of *Adams v. United States,* 319 U. S. 312, 63 S. Ct. 1122, 87 L. Ed. 1221. The ultimate question to be determined was whether Camp Claiborne, Louisiana, was within the Federal criminal jurisdiction. In that case the government had acquired title to the land at the time of the crime, but it had not given notice as required by the Act of October 9, 1940. (40 U. S. C., §255.) This Court held that since the government had not accepted jurisdiction in the manner required by the act, the Federal court had no jurisdiction over the proceeding. In the instant case, the government has given notice, but has not acquired the land.

This act (40 U. S. C., §255) requires the concurrence of two events before the United States obtains exclusive jurisdiction: *i. e.,* first, the acquisition of the land, and second, the giving of the required notice. If either step is omitted, the United States does not acquire exclusive jurisdiction. The claim of exclusive jurisdiction in Wilsonia Village is contrary to the express terms of this act —the very act that the Secretary of Interior gave notice under.

3. The legal philosophy of the relationship between the various states and the national government ever since

the founding of the Union has been that the United States does not have exclusive jurisdiction to any parcel of land (other than the District of Columbia) unless the United States (1) is the owner of the parcel of land involved, (2) has affirmatively accepted exclusive jurisdiction, and (3) uses it, directly or indirectly, for a federal purpose.

In *James v. Dravo Contracting Company,* 302 U. S. 134, 58 S. Ct. 208, 82 L. Ed. 155, the question involved was whether the Dravo Contracting Company, a Pennsylvania corporation, was liable for a tax to the State of West Virginia on the gross receipts on a group of contracts with the United States for the construction of locks and dams in the Kenawha River and Ohio River. This Court held that the title to the beds of the rivers were in the state and that although the Federal government may have paramount authority for the construction of the dams and locks, nevertheless the title was in the state. This Court points out that the transfer of legislative jurisdiction carries with it not only benefits but obligations, and it may be highly desirable in the interests of both the national government and the state that the latter should not be entirely ousted from its jurisdiction. The possible importance of reserving to the state jurisdiction for local purposes which involve no interference with the governmental functions is being more and more clear as the activities of the government expand, and large areas within the states are acquired. The Court concluded that as far as the territorial jurisdiction is concerned, the state had authority to lay the tax with respect to the activities of the contracting company carried on at the respective dam sites.

This Court arrived at a similar decision in *Silas Mason Company, Inc. v. State Tax Commission of the State of*

Washington, 302 U. S. 186, 58 S. Ct. 233, 82 L. Ed. 187, which involved an occupation tax of the State of Washington for work performed in connection with the building of Grand Coulee Dam on the Columbia River.

This fundamental premise that the government must own the land and use it for the purpose for which it was acquired has been consistently applied by this Court from the earliest decisions to the present date. Thus in *Fort Leavenworth Railroad v. Lowe,* 114 U. S. 525, 542, 5 S. Ct. 995, 29 L. Ed. 264, it was held that the jurisdiction granted by a state is necessarily temporary, to be exercised only so long as the place is continued to be used for the public purpose for which the property was acquired or reserved from sale. When the property ceases to be used for such purpose, the jurisdiction reverts to the state. In *Palmer v. Barrett,* 162 U. S. 399, 16 S. Ct. 837, 40 L. Ed. 1015, this Court held that since the land in question was not being used for the purpose for which it was acquired, that exclusive jurisdiction of the United States over the land was at least suspended while a lease which had been made by the government to the City of Brooklyn remained in force.

In *Arlington Hotel Co. v. Fant,* 278 U. S. 439, 49 S. Ct. 227, 73 L. Ed. 447, private interests under lease from the government operated a hotel on government owned land in Hot Springs Military Reservation. The State of Arkansas had ceded to the United States exclusive jurisdiction over the military reservation which embraced a small hospital site and a contiguous parcel on which the hotel was being operated. This court held that the hospital and hotel site were within the jurisdiction of the United States because of the federal purpose to which the springs and hospital were devoted; and that they prop-

erly included the hotel, which was operated for the convenience of persons seeking the benefit of the springs, and offered means whereby the public might be aided by surplus water not needed by the hospital. The land was owned by the government, and although the hotel was operated privately, it was done so for a federal purpose.

The decisions of the Supreme Courts of the various states and the lower Federal courts are in harmony with this principle. These include, *United States v. Tully,* 140 Fed. 899 (D. Mont.); *Valley County v. Thomas,* 109 Mont. 345, 97 P. 2d 345; *Brooke v. State,* 155 Ala. 78, 46 So. 491; *Mayor and City Council of Baltimore v. Linthicum,* 183 Atl. 531; *Atkinson v. State Tax Comm.,* 156 Ore. 461, 67 P. 2d 161; *Johnson v. Morrill,* 20 Cal. 2d 446, 126 P. 2d 873; *LaDuke v. Melin,* 45 N. D. 349, 177 N. W. 673.

There is no case holding, and it has not been previously contended, that the United States acquires jurisdiction by encirclement.

The petitioners recognize the principle stated by this Court in *Collins v. Yosemite Park and Curry Company,* 304 U. S. 518, 58 S. Ct. 1009, 82 L. Ed. 1502, that the states of the Union and the national government may make mutually satisfactory arrangements as to jurisdiction of territory within their borders, and thus, in a most effective way, cooperatively adjust problems flowing from our dual system of government. But neither this case nor any of the other decisions of this Court part from the principle that the United States does not have exclusive jurisdiction of any parcel of land unless it is the owner of the parcel of land involved. This is recognized in 18 U. S. Code, §7, subd. 3; in 40 U. S. Code, §255; and by the numerous acts of Congress establishing

the various national parks. The various acts of Congress establishing national parks authorize the Secretary of Interior to acquire privately owned land. These statutes provide that when title to the privately owned land has been vested in the United States, all of the land described shall be added to and become part of the particular park and shall be subject to all laws and regulations applicable thereto. (16 U. S. C., §47e, 51, 45a, 16le, 167a, 192b, 243, 251a, 261, 343b, 404c-11, 424b, 403h-11.)

4. The United States attempts to claim exclusive jurisdiction of Wilsonia Village contrary to the expressed terms of the statute authorizing the United States to accept jurisdiction. The Secretary of the Interior, by letter dated April 21, 1945, to the Governor of California, stated among other things that he was giving notice pursuant to 40 U. S. C., §255, that the United States accepts exclusive jurisdiction over all lands now included in Kings Canyon National Park. [R. 61.] However, this statute specifically relates to title to land to be purchased by the United States and acquisition by the United States of jurisdiction over such lands. It provides that no public money shall be expended upon any site or land purchased by the United States unless certain conditions are met. The last paragraph of the section provides that "notwithstanding any other provision of law, the obtaining of exclusive jurisdiction in the United States over lands or interests therein which have been or shall hereafter be acquired by it shall not be required"; but the head of any department may "accept or secure from the State in which any lands or interests therein under his immediate jurisdiction, custody, or control are situated, consent to or cession of such jurisdiction, exclusive or partial, not heretofore obtained" by the filing of a notice

of such acceptance. The last sentence provides: "Unless and until the United States has accepted jurisdiction over lands hereafter to be acquired as aforesaid, it shall be conclusively presumed that no such jurisdiction has been accepted." Thus it will be seen that the Act of Congress by which the Secretary of the Interior claims to accept exclusive jurisdiction on behalf of the United States specifically provides that the land shall be acquired by the United States. Therefore, it follows, that the United States did not acquire exclusive jurisdiction of Wilsonia Village.

It is unfortunate that this proceeding arose over the issuance of a liquor license. The objection by the Park Service to its issuance did not relate in any way to the conduct of the business, to the liquor business itself, to public welfare or morals, nor to any detriment of any kind to the national park. If the operation of this business is illegal it necessarily follows that the operation of all other businesses within Wilsonia Village, the grocery store, the hotel, the barber shop, or whatever else there is, is likewise illegal. It is pointed out by this Court in *Collins v. Yosemite Park and Curry Company, supra* (304 U. S. 518, 58 S. Ct. 1009, 82 L. Ed. 1502), that all business in a national park is carried on by a concession issued by the Department of the Interior. We believe that the inaction by the Government for sixty years constitutes an administrative determination that exclusive jurisdiction was never ceded. If the decision of the courts below stand, then it has been illegal for the State of California and the County of Tulare to conduct any of their governmental functions, such as the building of roads, police protection, fire protection, sanitation, operation of schools, and the establishment of the County Fire District.

Conclusion.

For the foregoing reasons we respectfully submit that this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

EDMUND G. BROWN,
Attorney General of the State of California,

WALTER L. BOWERS,
Assistant Attorney General,
Attorneys for the Petitioner, State of California.

BAYARD RHONE,
Deputy Attorney General,
Of Counsel.

BERTRAM W. GEARHART,
Attorney for Petitioners, Harry Theodore Petersen, et al.

ELMORE WINKLER,
Of Counsel.

APPENDIX.

PERTINENT STATUTORY PROVISIONS.

California Statutes of 1891, page 262 (Chapter 181) provide as follows:

> "Section 1. The state of California hereby cedes to the United States of America exclusive jurisdiction over such piece or parcel of land as may have been or may be hereafter ceded or conveyed to the United States, during the time the United States shall be or remain the owner thereof, for all purposes except the administration of the criminal laws of this State and the service of civil process therein."

California Statutes of 1919, page 74 (Chapter 51), approved April 15, 1919, provide as follows:

> "Section 1. Exclusive jurisdiction shall be and the same is hereby ceded to the United States over and within all of the territory which is now or may hereafter be included in those several tracts of land in the State of California set aside and dedicated for park purposes by the United States as 'Yosemite national park,' 'Sequoia national park,' and 'General Grant national park,' respectively; saving, however, to the State of California the right to serve civil or criminal process within the limits of the aforesaid parks in suits or prosecutions for or on account of rights acquired, obligations incurred or crimes committed in said state outside of said parks; and saving further, to the said state the right to tax persons and corporations, their franchises and property on the lands included in said parks, and the right to fix and collect license fees for fishing in said parks; and

saving also to the persons residing in any of said parks now or hereafter the right to vote at all elections held within the county or counties in which said parks are situate; provided, however, that jurisdiction shall not vest until the United States through the proper officer notifies the State of California that they assume police jurisdiction over said parks."

41 Stats. 731, approved June 20, 1920 (16 U. S. C. 57), provided:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of the act of the Legislature of the State of California (approved April 15, 1919), ceding to the United States exclusive jurisdiction over the territory embraced and included within the Yosemite National Park, Sequoia National Park, and General Grant National Park, respectively, are hereby accepted and sole and exclusive jurisdiction is hereby assumed by the United States over such territory, saving, however, to the said State of California the right to serve civil or criminal process within the limits of the aforesaid parks or either of them in suits or prosecutions for or on account of rights acquired, obligations incurred, or crimes committed in said State outside of said parks; and saving further to the said State the right to tax persons and corporations, their franchises and property on lands included in said parks, and the right to fix and collect license fees for fishing in said parks; and saving also to the persons residing in any of said parks now or hereafter the right to vote at all elections held within the county or counties in which said parks

are situated. All the laws applicable to places under sole and exclusive jurisdiction of the United States shall have force and effect in said parks or either of them. All fugitives from justice taking refuge in said parks, or either of them, shall be subject to the same laws as refugees from justice found in the State of California."

Section 1 of 54 Stats. 41, approved March 4, 1940 (16 U. S. C. 80) provides among other things as follows:

"The tract of land in the State of California, particularly described as follows, to wit: * * * [The description is deleted here since the land involved is not within said description]; * * * is hereby reserved and withdrawn from settlement, occupancy, or disposal under the laws of the United States and dedicated and set apart as a public park, to be known as the Kings Canyon National Park, for the benefit and enjoyment of the people: *Provided,* That nothing in sections 80-80d of this title shall be construed to affect or abridge any right acquired by any citizen of the United States in the above-described area: *And provided further,* That no grazing permits heretofore issued and in effect on January 15, 1939, affecting the area described in this section, for whose renewal an application is made before the date of expiration, shall be affected by sections 80-80d of this title, except that they shall be subject to such terms and conditions to insure protection of the lands and for other purposes as may be prescribed by the Secretary of the Interior."

54 Stats. 43, approved March 4, 1940, being Section 2 of the act quoted immediately above (16 U. S. C. 80a), provides as follows:

> "The General Grant National Park is hereby abolished, and the west half of section 33, township 13 south, range 28 east, and west half of section 4, all of section 8 and the northwest quarter of section 9, township 14 south, range 28 east, Mount Diablo meridian, California, together with the lands formerly within the General Grant National Park, California, and particularly described as follows, to wit: All of sections 31 and 32, township 13 south, range 28 east, and sections 5 and 6, township 14 south, range 28 east, of the same meridian, are, subject to valid existing rights, hereby added to and made a part of the Kings Canyon National Park and such lands shall be known as the General Grant grove section of the said park. The General Grant grove section of the Kings Canyon National Park may, by proclamation of the President, be extended to include the following described lands, to wit: Section 9, south half, section 10, southwest quarter, and that part of the east half south of Generals Highway; section 11, that part south of Generals Highway; section 13, that part south of Generals Highway; section 14, that part south of Generals Highway, section 15, east half, northwest quarter, and the southeast quarter of the southwest quarter, section 21, southeast quarter of the northeast quarter, and the east half of the southeast quarter; section 22, east half, east half of the northwest quarter, southwest quarter of the northwest quarter and southwest quarter; section 23; section 24, that part south of Gen-

erals Highway; sections 25 and 26; section 27, east half, northwest quarter, and that part of the southwest quarter north and east of the crest of Redwood Mountain; section 34, that part east of the crest of Redwood Mountain; sections 35 and 36, township 14 south, range 28 east; all of sections 1 and 2; section 3, that part east of the crest of Redwood Mountain; section 11, that part east and north of the crest of Redwood Mountain; all of section 12; section 13, that part north of the Sequoia National Park boundary, township 15 south, range 28 east, Mount Diablo meridian, which shall be subject to all laws, rules, and regulations applicable to the said park. Such extension of the General Grant grove section of the said park shall not interfere with the movement of stock and vehicular traffic without charge, under general regulations to be prescribed by the Secretary of the Interior, to and from national forest lands on either side of the said park extension. The Kings Canyon National Park shall receive and use all moneys heretofore or hereafter appropriated for General Grant National Park."

Section 119 of the Government Code of California (added by Statutes of 1943, Chapter 96), provides as follows:

"Exclusive jurisdiction shall be and the same is hereby ceded to the United States over and within all of the territory which is now or may hereafter be included in those several tracts of land in the State of California set aside and dedicated for park purposes by the United States as 'Kings Canyon National Park'; saving however to the State of Cali-

fornia the right to serve civil or criminal process within the limits of the aforesaid park in suits or prosecutions for or on account of rights acquired, obligations incurred, or crimes committed in said State outside of said park; and saving further to the said State the right to tax persons and corporations, their franchises and property on the lands included in said park, and the right to fix and collect license fees for fishing in said park; and saving also to the persons residing in said park now or hereafter the right to vote at all elections held within the county or counties in which said park is situate. The jurisdiction granted by this section shall not vest until the United States through the proper officer notifies the State of California that it assumes police jurisdiction over said park."

Section 120 of the Government Code of California (added by Statutes of 1943, Chapter 536), provides as follows:

"Upon receipt of notification of the acceptance by the United States of exclusive jurisdiction over lands situated within the State of California, the Governor shall cause to be filed a true and correct copy of said notification in the office of the recorder of the county in which said lands are located and in the office of the clerk of the board of supervisors of the county in which said lands are located."

54 Stats. 1083, approved October 9, 1940 (40 U. S. C. 255), provides among other things, as follows:

"No public money shall be expended upon any site or land purchased by the United States for the pur-

poses of erecting thereon any armory, arsenal, fort, fortification, navy yard, customhouse, lighthouse, or other public building of any kind whatever, until the written opinion of the Attorney General shall be had in favor of the validity of the title."

* * * * * * * *

[The second to seventh paragraphs inclusive are omitted as not applicable.]

* * * * * * * *

"Notwithstanding any other provision of law, the obtaining of exclusive jurisdiction in the United States over lands or interests therein which have been or shall hereafter be acquired by it shall not be required; but the head or other authorized officer of any department or independent establishment or agency of the Government may, in such cases and at such times as he may deem desirable, accept or secure from the State in which any lands or interests therein under his immediate jurisdiction, custody, or control are situated, consent to or cession of such jurisdiction, exclusive or partial, not theretofore obtained, over any such lands or interests as he may deem desirable and indicate acceptance of such jurisdiction on behalf of the United States by filing a notice of such acceptance with the Governor of such State or in such other manner as may be prescribed by the laws of the State where such lands are situated. Unless and until the United States has accepted jurisdiction over lands hereafter to be acquired as aforesaid, it shall be conclusively presumed that no such jurisdiction has been accepted."

Title 18, U. S. C. Section 7, subdivision (3), provides as follows:

> "The term 'special maritime and territorial jurisdiction of the United States,' as used in this title, includes:
>
> '(3) Any lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building.'"

INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statutes involved	2
Statement	3
Argument	5
Conclusion	8

CITATIONS

Cases:

Adams v. *United States*, 319 U. S. 312	7
Collins v. *Yosemite Park Co.*, 304 U. S. 518	6, 7
United States v. *Unzeuta*, 281 U. S. 138	8

Statutes:

Act of March 4, 1940, 54 Stat. 41, 16 U.S.C. secs. 80, 80a	2, 4, 5
Act of October 9, 1940, 54 Stat. 1083, 40 U.S.C. sec. 255	2, 6
California Act, approved April 7, 1943, Govt. Code, sec. 119	2, 4

In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 341

STATE OF CALIFORNIA AND HARRY THEODORE PETERSEN, IDA PETERSEN, CLAYTON LEON DAIGLE AND AZILE CAROL DAIGLE, INDIVIDUALLY AND AS A CO-PARTNERSHIP DOING BUSINESS AS "THE LODGE," PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court (R. 46-53) is reported in 91 F. Supp. 209. The opinion of the Court of Appeals (R. 90-96) is reported in 191 F. 2d 154.

JURISDICTION

The judgment of the Court of Appeals was entered August 2, 1951 (R. 97). The petition for

a writ of certiorari was filed September 20, 1951. The jurisdiction of this Court is invoked under 28 U.S.C. sec. 1254(1).

QUESTION PRESENTED

Whether the cession to the United States by the State of California of exclusive jurisdiction over the Kings Canyon National Park included privately owned parcels of land within the park.

STATUTES INVOLVED

The relevant portions of the Act of March 4, 1940, 54 Stat. 41, 16 U.S.C. sec. 80a, establishing Kings Canyon National Park and of the California Act, approved April 7, 1943, Government Code section 119, ceding exclusive jurisdiction to the United States are set out in the record at pages 30-32. The Act of October 9, 1940, 54 Stat. 1083, 40 U.S.C. sec. 255, provides, in part, as follows:

> Notwithstanding any other provision of law, the obtaining of exclusive jurisdiction in the United States over lands or interests therein which have been or shall hereafter be acquired by it shall not be required; but the head or other authorized officer of any department or independent establishment or agency of the Government may, in such cases and at such times as he may deem desirable, accept or secure from the State in which any lands or interests therein under his immediate jurisdiction, custody, or control are situated, consent to or cession of such jurisdiction, exclusive or partial, not theretofore obtained, over

any such lands or interests as he may deem desirable and indicate acceptance of such jurisdiction on behalf of the United States by filing a notice of such acceptance with the Governor of such State or in such other manner as may be prescribed by the laws of the State where such lands are situated. Unless and until the United States has accepted jurisdiction over lands hereafter to be acquired as aforesaid, it shall be conclusively presumed that no such jurisdiction has been accepted.

STATEMENT

This suit was instituted by the United States against Harry Petersen and other persons (hereafter referred to as "the Petersens"), doing business as "The Lodge," seeking an injunction against sale of liquor at The Lodge without appropriate Federal permit and a declaratory judgment that land particularly described is subject to exclusive jurisdiction of the United States (R. 2-10). Pursuant to stipulation, the State of California was permitted to intervene as a defendant and its answer claimed exclusive jurisdiction was vested in the State (R. 17-25). After hearing the case upon stipulated facts (R. 44-45), the district court granted the declaratory relief sought but denied an injunction on the ground that the criminal remedy was adequate (R. 46-53). The relevant facts may be briefly summarized as follows:

"The Lodge" is located in Wilsonia Village, which is a residential community composed prin-

cipally of summer homes, less than five families living there the year around (R. 26, 37, 39). The village constitutes a tract of some 120 acres within and entirely surrounded by Kings Canyon National Park (R. 27). That park was created by the Act of March 4, 1940, 54 Stat. 41, 16 U.S.C. sec. 80, principally from lands formerly within the General Grant National Park. The park included the section of land in which Wilsonia Village is located.[1] The California legislature, by act approved April 7, 1943, ceded to the United States exclusive jurisdiction "over and within all of the territory which is now or may hereafter be included in those several tracts of land in the State of California set aside and dedicated for park purposes by the United States as 'Kings CanyonNational Park' ", with reservations as to service of process, voting rights, etc., not material here (R. 31).[2] Notification of acceptance of this cession was given by the Secretary of the Interior in April, 1945 (R. 32).

Subsequently, in November 1947, the Petersens applied to the Department of the Interior for a permit to sell liquor but this was denied in March 1948 (R. 35-36). In April 1948, application was made to the appropriate state authority which in July 1948, over the protest of National Park Serv-

---

[1] The village is located in section 5, Twp. 14 S., R. 28 E., while the Act embraces "All of * * * sections 5 and 6, township 14 south, range 28 east * * *." (R. 26, 30.)

[2] Previously, exclusive jurisdiction over General Grant National Park as well as Yosemite and Sequoia National Parks had been ceded to the United States (R. 28-30).

ice, issued seasonal licenses under which The Lodge has been operating (R. 36-37).

Upon these facts, the district court concluded that California intended to cede and the United States intended to accept exclusive police jurisdiction over the privately owned lands in question and that this could constitutionally be done (R. 50-51). The Court of Appeals agreed with both of these conclusions and affirmed the judgment (R. 90-96).

ARGUMENT

1. There can be no question that the lands here involved were expressly included within the boundaries of Kings Canyon National Park as established by the Act of March 4, 1940. The existence of private property rights was expressly recognized by providing that the specified sections of land "are, subject to valid existing rights, hereby added to and made a part of the Kings Canyon National Park." Petitioners' argument (p. 12) that only a portion of section 5 was included in the park is refuted by the plain language of the statute. See note 1, *supra*, p. 4. It is equally clear, as both courts below have held, that California intended to cede and the Secretary of the Interior intended to accept exclusive jurisdiction over all of the territory included within that national park.

2. Petitioners do not here urge that any constitutional obstacle prevents the cession of exclusive jurisdiction over all of the park, including the lots therein to which private persons may hold fee

title or some lesser interest. In *Collins* v. *Yosemite Park Co.*, 304 U.S. 518, this Court pointed out (p. 529) that Clause 17, sec. 8 of Article I of the Constitution is not the sole authority for the acquisition of jurisdiction and (p. 530) that "As the National Government may, 'by virtue of its sovereignty' acquire lands within the borders of states by eminent domain and without their consent, the respective sovereignties should be in a position to adjust their jurisdictions. There is no constitutional objection to such an adjustment of rights." The desirability of adjustment of jurisdiction of the two sovereigns upon a practical basis, following the established boundaries of the national park, is obvious.

Petitioners argue, however, that federal statutes prohibit any such sensible solution and require that jurisdiction be divided according to the property interests existing in individual parcels within the park boundaries. As is usually the case, almost all of the land embraced in the Kings Canyon National Park is owned by the United States.[3] The reasonable application of the Act of October 9, 1940, 54 Stat. 1083, 40 U.S.C. sec. 255, authorizing the acceptance of jurisdiction, to the situation here presented is to read it in terms of the entire area included in the particular project in-

---

[3] The court below pointed out (R. 94) that while there are many privately-owned tracts of land in National Parks in the western states, they comprise less than 1% of the area of the Parks.

volved—*i.e.,* the National Park. The California statute uses the language "in said park" or "outside of said park" many times (R. 31-32) and the letter of the Secretary of the Interior assumes police jurisdiction "over the said park" (R. 32). Petitioners' construction, which views "lands" in terms of each individual lot or parcel rather than the total area involved, would produce the absurd result of a checker-board jurisdiction which would shift with each conveyance of an individual lot. In *Adams* v. *United States,* 319 U.S. 312, this Court, speaking of the 1940 Act, said (p. 314): "The Act created a definite method of acceptance of jurisdiction so that all persons could know whether the government had obtained 'no jurisdiction at all, or partial jurisdiction, or exclusive jurisdiction'." Yet petitioners' construction would compel resort to the land title records to determine the question of jurisdiction at any particular time.[4]

Neither the *Adams* case, with which petitioners claim there is a conflict (Pet. p. 13), nor any of the other cases cited by them (Pet. pp. 14-16), supports their attempt to treat each lot or acre in the park individually. On the contrary, in the *Collins* case, *supra,* this Court referred (304 U.S. at p. 528) to the agreement "as to the future jurisdic-

[4] This case does not present any question of criminal jurisdiction. However, petitioners' construction (pp. 12-13) of 18 U.S.C. sec. 7 would seem to be subject to the same objection of attempting to subdivide "land reserved or acquired" into individual lots.

tion and rights of each in the entire area of Yosemite National Park." Compare *United States* v. *Unzeuta,* 281 U.S. 138, sustaining federal jurisdiction over a railroad right of way through a military reservation.

Finally, as the court below pointed out (R. 95-96), the sale of liquor within the boundaries of the Park would tend to thwart its beneficial purposes, unless federally regulated in the interest of the public (cf. Pet. 18).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

PHILIP B. PERLMAN,
Solicitor General.

WM. AMORY UNDERHILL,
Assistant Attorney General.

ROGER P. MARQUIS,
Attorney.

NOVEMBER 1951.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1951 973324 369